

COPY (33)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES E. BROWN,

Plaintiff

vs.

GERALD BRITTON,
EUGENE BERDANIER, and
DAVID J. KURTZ,

Defendants

: Civil Action No. 1:CV-00-1224
: Honorable Sylvia H. Rambo

FILED
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PER _____
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MOTION OF DEFENDANTS, GERALD BRITTON,
EUGENE BERDANIER AND DAVID J. KURTZ,
TO DISMISS THE COMPLAINT PURSUANT
TO F. R. Civ. P. 12(b)(6) OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT

Defendants, Gerald Britton, et al., move to dismiss the Complaint pursuant to F. R. Civ. P. 12(b)(6) or, in the alternative, for Summary Judgment and respectfully represent:

1. Charles E. Brown, a prisoner, intermittently incarcerated in the Schuylkill County Prison most recently from January 19, 1998 until August 15, 2000 has filed the instant Amended Complaint under the Civil Rights Act, 42 U.S.C. § 1983 naming as defendants, Gerald Britton, Eugene Berdanier and David J. Kurtz.
2. No claim or cause of action is set forth in the Amended Complaint as to the County of Schuylkill, Schuylkill County Prison Board Members, Schuylkill County Prison, Forrest L. Shadle, Jerome P. Knowles, Stanley Tobash, Anthony Kankowski and William Baldwin, named as defendants in the original Complaint and defendants move for the dismissal and/or withdrawal with prejudice as to those defendants.

3. The Amended Complaint sets forth a laundry list of prison conditions claims for which plaintiff alleges he suffered mental distress, anguish, humiliation, degradation, psychological pain and suffering. However, the Amended Complaint fails to allege any specific personal injury arising from the prison condition claims and seeks monetary damage in essence for mental stress and anguish. Accordingly, the prison condition allegations of the Amended Complaint fail to state a claim upon which relief may be granted under the 1996 Prison Litigation Reform Act 42 U.S.C. § 1997e(e) providing that no Federal Civil Rights Action may be brought by a prisoner confined in a jail, prison or other correctional facility for mental or emotional injury suffered while in custody without a prior showing of physical injury. No physical injury is alleged.

4. Plaintiff's Complaint alleges a claim for lack of medical treatment arising from an injury sustained on March 31, 2000 for a period of 28 days. Defendants move for Summary Judgment on the following grounds:

- (a) David Kurtz, former Warden of Schuylkill County Prison, moves for Summary Judgment on the ground that he resigned as Warden of the Schuylkill County Prison on April 9, 1999.
- (b) The medical records of the Schuylkill County Prison and attached affidavit of the custodian of medical records, Patricia Hoak, R.N., establish that medical treatment was, in fact, provided relative to plaintiff's knee injury, including a Pottsville Hospital Emergency Room examination and treatment, including knee immobilizer, ice, crutches, medication for pain; examination by Dr. Narang, medications from the nursing staff and ultimately referral to an outside orthopedic surgeon.

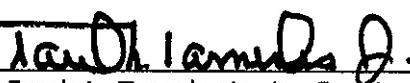
5. Defendants move for Summary Judgment predicated upon the affidavits of Gerald Britton, Eugene Berdanier, and David J. Kurtz, previously submitted in support of defendant's original Motion to Dismiss the Complaint or, in the alternative, for Summary Judgment and are resubmitted for the purpose of establishing the existence of a prison grievance procedure and the absence of any submitted grievance relative to the prison condition claims Complaint as well as the non-involvement of former Warden David Kurtz subsequent to his resignation on April 9, 1999 and non-involvement of current Warden Gerald Britton prior to his appointment and assumption of duties on July 25, 1999.

WHEREFORE, defendants, Gerald Britton, et al., move to dismiss the Complaint pursuant to F. R. Civ. P. 12(b)(6) or, in the alternative, for Summary Judgment.

RESPECTFULLY SUBMITTED,

ZIMMERMAN, LIEBERMAN & DERENZO, LLP

BY:



Frank L. Tamulonis, Jr., Esquire
Attorneys for Defendants,
Gerald Britton, et al.